

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 213 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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ADODIYA BAI BACHIBEN BHANABHAI

Versus

DISTRICT MAGISTRATE

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Appearance:

MR RR TRIPATHI for MR RC KODEKAR for Petitioner

MR SS PATEL AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 11/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 8th November, 1998, made by the District

Magistrate, Bhavnagar, under the powers conferred upon him under sub-section (2) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'bootlegger' within the meaning of section 2 (b) of the Act, and her activities are found to be prejudicial to the maintenance of public order within the meaning of section 3 (4) of the Act. During the year 1998, 13 offences punishable under the Bombay Prohibition Act are registered against the petitioner. In each of the said cases, the petitioner was found to be in possession of the substantial quantity of country liquor. The petitioner is also stated to be producing the country liquor at her home. Besides, three individuals, on assurance of anonymity, have given statements in respect of the anti-social activities of the petitioner and its adverse effect on the public tranquility and the even tempo of life. The witnesses have particularly referred to the incidents of 27th October, 1998, 26th October, 1998 and 27th October, 1998 respectively.

It is contended that the reports of the chemical examination of the liquor alleged to have been recovered from the possession of the petitioner are vital documents and ought to have been considered by the Detaining Authority for forming the subjective satisfaction and the petitioner also ought to have been supplied the reports so as to enable her to make an effective representation against the impugned order. It is undisputed that in neither of the cases registered against the petitioner, the reports of the chemical examination has been furnished to the petitioner. It is, however, contended that whatever relevant documents were in existence on the date of detention and were supplied to the Detaining Authority, were relied upon by the Detaining Authority. I am afraid, the answer given by the Detaining Authority is not adequate. The Detaining Authority has not categorically stated whether the reports of the chemical examination were available or not. There is a possibility that the relevant documents which were in existence on the date of detention, may not have been placed before the Detaining Authority. It, therefore, can not be inferred that neither of the reports of the chemical examination was in existence on the date of the order. It can not be gainsaid that the reports of the chemical examination are vital documents and may affect the subjective satisfaction recorded by the Detaining Authority. It is, therefore, imperative that, if available, the same should be furnished to the detenu

also. In the present case, the Detaining Authority has failed to show that such reports were not available on the date of the detention. The subjective satisfaction recorded by the Detaining Authority is, therefore, vitiated and the continued detention of the petitioner is illegal and invalid.

Petition is, therefore, allowed. The order dated 8th November, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI